



## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-557-821]

#### **Utility Scale Wind Towers from Malaysia: Final Affirmative Determination of Sales at Less Than Fair Value**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) determines that utility scale wind towers (wind towers) from Malaysia are being, or are likely to be, sold in the United States at less than fair value (LTFV) for the period of investigation July 1, 2019, through June 30, 2020.

**DATES:** Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Jerry Huang, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4047.

#### **SUPPLEMENTARY INFORMATION:**

##### Background

On May 24, 2021, Commerce published in the *Federal Register* a preliminary negative determination in the LTFV investigation of wind towers from Malaysia.<sup>1</sup> Commerce invited interested parties to comment on the *Preliminary Determination*.<sup>2</sup> On August 23, 2021, we issued a post-preliminary determination to address the petitioner's<sup>3</sup> allegation that Commerce should determine normal value (NV) under section 773(d) of the Tariff Act of 1930, as amended

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<sup>1</sup> See *Utility Scale Wind Towers From Malaysia: Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination*, 86 FR 27828 (May 24, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

<sup>2</sup> See *Preliminary Determination*, 86 FR at 27829.

<sup>3</sup> The petitioner in this investigation is the Wind Tower Trade Coalition, whose members are Arcosa Wind Towers Inc. and Broadwind Towers, Inc.

(the Act), with respect to CS Wind Corporation and CS Wind Malaysia Sdn Bhd (collectively, CS Wind).<sup>4,5</sup> On August 31, 2021, we received case briefs from CS Wind and the petitioner.<sup>6</sup> On September 8, 2021, we received rebuttal briefs from CS Wind and the petitioner.<sup>7</sup> On September 22, 2021, we held a public hearing at the request of the petitioner.<sup>8</sup> A summary of the events that occurred since Commerce published the *Preliminary Determination*, may be found in the Issues and Decision Memorandum.<sup>9</sup>

### Scope of the Investigation

The products covered by this investigation are wind towers from Malaysia. For a complete description of the scope of this investigation, *see* Appendix I.

### Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

### Verification

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<sup>4</sup> See Petitioner's Letter, "Utility Scale Wind Towers from Malaysia: Multinational Corporation Allegation," dated February 2, 2021.

<sup>5</sup> See Memorandum, "Post-Preliminary Decision Memorandum in the Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from Malaysia," dated August 23, 2021.

<sup>6</sup> See CS Wind's Letter, "CS Wind' Case Brief," dated August 31, 2021; and Petitioner's Letter, "Case Brief," dated August 31, 2021.

<sup>7</sup> See CS Wind's Letter, "CS Wind's Rebuttal Brief," dated September 8, 2021; and Petitioner's Letter, "Petitioner's Rebuttal Brief," dated September 8, 2021.

<sup>8</sup> See Transcript to Public Hearing, dated September 22, 2021.

<sup>9</sup> See Memorandum, "Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from Malaysia," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.<sup>10</sup>

#### Changes Since the Preliminary Determination

Based on our review of the record and comments received from interested parties, we made certain changes to our calculation of CS Wind's dumping margin. For a discussion of these changes, *see* the Issues and Decision Memorandum.

#### All-Others Rate

Section 735(c)(5)(A) of the Act, provides that Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Commerce determined an estimated weighted-average dumping margin for the individually-examined respondent, *i.e.*, CS Wind, that is not zero, *de minimis*, or determined entirely under section 776 of the Act. Therefore, we are assigning the dumping margin calculated for the sole mandatory respondent as the all-others rate for this final determination.

#### Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter/Producer	Dumping Margin (percent)	Cash Deposit Rate (adjusted for subsidy offsets) <sup>11</sup> (percent)
CS Wind Corporation/CS Wind Malaysia Sdn Bhd	3.20	0.00
All Others	3.20	0.00

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<sup>10</sup> See Commerce's In-Lieu-Of-Verification Questionnaire, dated August 13, 2021; *see also* CS Wind's Letter, "Utility Scale Wind Towers from Malaysia: In Lieu of Verification Questionnaire Response," dated August 23, 2021.

<sup>11</sup> See Memorandum, "Export Subsidies Found in the Companion Countervailing Duty Investigation," dated concurrently with this notice.

## Disclosure

Commerce intends to disclose its calculations and analysis performed in this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

## Suspension of Liquidation

In accordance with section 735(c)(1)(B) and (C) of the Act, for this final determination, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all appropriate entries of wind towers from Malaysia, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for the producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin listed above.

These suspension of liquidation instructions will remain in effect until further notice.

## International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of this final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(3) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States

is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of wind towers from Malaysia no later than 75 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, all cash deposits posted will be refunded, and suspension of liquidation will be lifted. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the “Suspension of Liquidation” section.

#### Notification Regarding Administrative Protective Orders

This notice will serve as a final reminder to the parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

#### Notification to Interested Parties

We are issuing and publishing this determination in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: October 6, 2021.

**Christian Marsh,**  
*Acting Assistant Secretary  
for Enforcement and Compliance.*

## **Appendix I**

### **Scope of the Investigation**

The merchandise covered by this investigation consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.*, where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.*, flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with non-subject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.*, accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

## Appendix II

### List of Sections Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Changes Since the *Preliminary Determination*
- IV. Discussion of the Issues
  - Comment 1: Collapsing CS Wind Malaysia with CS Wind Corporation
  - Comment 2: Total Adverse Facts Available (AFA) for CS Wind
  - Comment 3: Date of Sale
  - Comment 4: Fees for Certain U.S. Sales
  - Comment 5: Steel Consumption for Door Frames
  - Comment 6: General and Administrative (G&A) Expense Ratio
  - Comment 7: Steel Plate Costs
  - Comment 8: Application of the Multinational Corporation (MNC) Provision to Non-Market Economy (NME) Countries
  - Comment 9: Constructed Value (CV) Profit and CV Selling Expense Ratios
  - Comment 10: Double Counting of Foreign Currency Translation Gains and Losses
- V. Recommendation

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